

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates For Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Petition for Waiver)	
)	
West River Telecommunications Cooperative)	
)	

PETITION FOR WAIVER

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ West River Telecommunications Cooperative (“WRT”, or “Petitioner”) hereby requests a waiver of the date for providing notification directly to the Commission regarding A-CAM II elections.

I. INTRODUCTION

WRT (SAC 381637) is a Rural Incumbent Local Exchange Carrier based in Hazen, North Dakota serving subscribers in North Dakota and South Dakota. WRT is a rate-of-return carrier that has received and is currently receiving legacy support, i.e., Connect America Fund

¹ 47 C.F.R. § 1.3

Broadband Loop Support (CAF BLS) and High-cost Loop Support (HCLS). In the Commission’s Order released on December 13, 2018,² it found that expanding the number of carriers receiving model-based support would advance the Commission’s longstanding objective to provide high-cost support based on forward-looking efficient costs to help spur additional broadband deployment in rural areas.³ The Commission has previously determined that Model-based support, backed by significant, verifiable deployment obligations, provides appropriate incentives for carriers to serve their rural and high-cost communities efficiently with modern broadband networks.⁴ For that reason, the Commission found it to be in the public interest to make the new model offer available to all carriers, including those that were not previously eligible.⁵

The Commission adopted a single-step process whereby electing carriers made an irrevocable acceptance of the offered amount and directed the Wireline Competition Bureau (“Bureau”) to release a public notice announcing the new model-based support amounts and

² *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 01-92, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, para. 39 (rel. December 13, 2018), (the “December 2018 Order”)

³ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8932, para. 287 (1997). However, we decline to adopt Home Telephone’s proposal to extend the new model offer to existing A-CAM carriers that receive less A-CAM support than they received in legacy support. See Home Tel. Co. Dec. 6 Letter at Attachment. As noted above, existing A-CAM carriers accepted that offer based on anticipated end-user revenues in light of the deployment obligations. Such carriers will be eligible for a revised offer.

⁴ See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3096, para. 20.

⁵ *December 13, 2018 Order*, para 39.

corresponding deployment obligations and providing carriers with 45 days to confirm acceptance of the revised offer.⁶

On May 2, 2019, the Bureau released a revised version of the Alternative Connect America Cost Model (A-CAM) v2.5.1 and announced the offers of model-based A-CAM II support to rate-of-return carriers that were still receiving legacy support to fund the deployment of voice and broadband-capable networks in their service territories. The Bureau indicated that operators should make their election by June 17, 2019.⁷

On June 5, 2019, the Bureau issued a Public Notice that corrected A-CAM II offers to 37 companies and extended the election window to July 17, 2019.⁸

On July 10, 2019, WRT submitted its notice of A-CAM II election to the National Exchange Carrier Association (“NECA”) for Study Area Code 381637, but due to an administrative error, failed to submit the election letter to the Bureau as well. NECA confirmed WRT’s A-CAM II election notification and responded with an email also dated July 10, 2019.⁹ Based upon the NECA communication, WRT incorrectly believed it had properly elected A-CAM II. Upon learning from NECA that it was not deemed to have elected A-CAM II on July 29, 2019¹⁰, WRT immediately notified the Bureau and directly submitted an ACAM election letter to the Bureau on July 29, 2019. WRT has exchanged emails with FCC staff to determine

⁶ *Id.* at para. 69

⁷ *See Public Notice*, WC Docket No. 10-90, May 2, 2019.

⁸ *See Public Notice*, WC Docket No. 10-90, June 5, 2019.

⁹ NECA email dated July 10 2019
(<https://www.dropbox.com/s/44k6zpm955k76vy/July%2010%20email.pdf?dl=0>)

¹⁰ NECA email dated July 29 2019
(<https://www.dropbox.com/s/menjensjyjeakhi/July%2029%20email.pdf?dl=0>)

how to best correct the error. In late September WRT learned that an informal administrative adjustment was not forthcoming, and WRT therefore submits this petition.

Grant of the requested relief would enable WRT to migrate to model-based support and would best serve consumers and businesses in its rural serving area. The requested relief is the result of unique circumstances, is in the public interest, and is consistent with FCC reform goals of promoting broadband deployment, ensuring the efficient use of resources, and providing sufficient and predictable support necessary to increase broadband deployment.¹¹

II. GOOD CAUSE EXISTS TO GRANT THE REQUESTED WAIVER PURSUANT TO SECTION 1.3 OF THE COMMISSION'S RULES.

Section 1.3 of the Commission's rules states that the agency's rules "may be waived by the Commission ... if good cause therefor is shown." The "good cause shown" standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance would not be in the public interest. Generally, waiver of the Commission's rules is granted when both (i) special circumstances warrant a deviation from the general rule and (ii) such deviation will serve the public interest.¹²

Good cause exists to grant the requested waiver. In extending the new model offer, or A-CAM II, to legacy carriers that did not previously elect model support, the Commission stated that by expanding the number of carriers receiving model-based support would advance the

¹¹ *December 13, 2018 Order*, para 1.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

Commission's longstanding objective to provide high-cost support based on a carrier's forward-looking, efficient costs and would help spur additional deployment in rural areas.¹³ Further, the new model offer made critical adjustments to encourage new carriers to take advantage of model-based support.¹⁴ WRT believes it is meeting the Commission's objectives, albeit beginning on July 29, 2019 rather than on July 17, 2019. WRT demonstrated its intent to elect A-CAM II by notifying NECA of its election on July 10, 2019. And, while WRT admittedly failed to send the notification to the Bureau at the same time, its notice to NECA on July 10, 2019 provides clear and unique evidence of its intent, and further provides proof that its failure was nothing more than an administrative error that prejudices no other party. Grant of the relief requested will meet the Commission's objectives and provide the benefits as envisioned by the Commission. Special circumstances compel deviation from strict application of the election process at issue herein, as it is abundantly clear that WRT intended to elect A-CAM II, and allowing their election fits within the Commission's USF reform and public interest goals.

III. GRANT OF THE WAIVER WOULD FURTHER THE COMMISSION'S GOALS BY ALLOWING WRT TO RECEIVE ACAM SUPPORT ENSURING SERVING THE PUBLIC INTEREST.

The FCC Fact Sheet, which accompanied the release of the *December 13, 2018 Order*, provided the background for the Order. Therein, it was stated that, "the high-cost program in the Commission's Universal Service Fund implements one of the Congress's core universal service policies-to ensure that consumers in expensive-to-serve parts of the country have access to the same voice and high-speed broadband services as urban consumers do, at reasonably similar rates." In 2011 and in 2016, the Commission adopted frameworks moving legacy cost-based

¹³ *December 13, 2018 Order*, para 31.

¹⁴ *Id.*

support to forward-looking broadband cost model and gave rate-of-return carriers the opportunity to elect model-based support.

In the *December 13, 2018 Order*, the Commission found that expanding the number of carriers receiving model-based support will advance the Commission’s longstanding objective to provide high-cost support based on a carrier’s forward-looking, efficient costs and will help spur additional broadband deployment in rural areas.¹⁵ Further, “the fixed amount of model-based support guaranteed to the carriers provides enormous benefits to carriers in planning capital spending, allowing them to deploy broadband to areas they would not have otherwise deployed than if they needed to base decisions on varying levels of legacy-based support.”¹⁶ Finally, the Commission found that, “Model-based support, backed by significant, verifiable deployment obligations, provides the appropriate incentives for carriers to serve their rural and high-cost communities efficiently with modern broadband networks.”¹⁷

Granting the Petition meets the foregoing Commission objectives and by so doing will serve the public interest.

IV. CONCLUSION

For the reasons stated above, WRT respectfully requests the Commission grant the Petition allowing WRT to elect A-CAM II support as it intended to on July 10th, and ensuring that the public interest is served.

¹⁵ *Id.* at para 31.

¹⁶ *Id.* at para. 36.

¹⁷ *Id.* at para 39.

Dated: October 4, 2019

By: /s/ Dan Caldwell

Dan Caldwell

President, Consortia Consulting

16924 Frances Street, Suite 115

Omaha, NE 68130

402-441-1671

dcaldwell@consortiaconsulting.com